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November 13, 2006

**VIA FACSIMILE**  
**EXPEDITED PROCEDURE**

To: Examiner Gerald J. O'Connor  
Group Art Unit No. 3627  
U. S. P. T. O.

Facsimile No. 571-273-8300

From: Phillip E. Miller

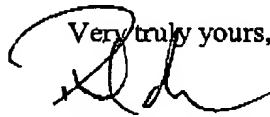
Facsimile No. 703-761-2375

Re: Filing of Appeal Brief in Response to Notice of Non-Compliant Appeal Brief  
U. S. Patent Application Serial No. 09/825,879  
Our Ref: YOR.191

Dear Examiner:


Enclosed please find an Appeal Brief in Response to Notice of Non-Compliant Appeal Brief in the above Application.

Thank you in advance for your kind consideration of this case.

Very truly yours,  
  
Phillip E. Miller

PEM/jdl  
Enclosure

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<b>TRANSMITTAL OF APPEAL BRIEF (Large Entity)</b>					Docket No. <b>YOR920000070US</b>	
In Re Application Of: <b>Connors et al.</b>						
Application No. <b>09/825,879</b>	Filing Date <b>April 5, 2001</b>	Examiner <b>Gerald J. O'Connor</b>	Customer No. <b>21254</b>	Group Art Unit <b>3627</b>	Confirmation No. <b>3754</b>	
Invention: <b>SYSTEM AND METHOD FOR RESTOCKING AND REPRISING MERCHANDISE</b>						
<b><u>COMMISSIONER FOR PATENTS:</u></b>						
Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:						
The fee for filing this Appeal Brief is: \$500.00 <i>(Already Paid. No Fee due)</i>						
<input type="checkbox"/> A check in the amount of the fee is enclosed.						
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.						
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. <u>50-0510</u> I have enclosed a duplicate copy of this sheet.						
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.						
<b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b>						
 _____ <i>Signature</i>			Dated: November 13, 2006			
Phillip E. Miller Reg. No. 46,060 McGinn IP Law Group, PLLC 8321 Old Courthouse Road, #200 Vienna, VA 22182 703-761-4100			<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">_____ (Date)</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">_____ Signature of Person Mailing Correspondence</div> <div style="border: 1px solid black; padding: 5px;">_____ Typed or Printed Name of Person Mailing Correspondence</div>			
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of

Connors et al.

Serial No.: 09/825,879

Group Art Unit: 3627

Filed: April 5, 2001

Examiner: Gerald J. O'Connor

For: SYSTEM AND METHOD FOR RESTOCKING AND REPRICING  
MERCHANDISE

Honorable Commissioner of Patents  
Alexandria, VA 22313-1450

**APPELLANT'S BRIEF ON APPEAL IN  
RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF**

Sir:

This Appeal Brief is filed in response to the Notice of Non-Compliant Appeal Brief dated **October 12, 2006** alleging that the Appeal Brief filed herein on **November 30, 2005** fails to comply with one or more provisions of 37 CFR 41.37(c). Appellant respectfully submits that Appeal Brief filed on November 30, 2005 fully complied with 37 CFR 41.37(c), but in the interest of expediting the appeal, Appellant has addressed the alleged items of non-compliance in the Notice in this Appeal Brief.

Appellant respectfully appeals the final rejection of claims 1-13 and 21-26 in the Office Action dated July 27, 2005. A Notice of Appeal and Appellant's Pre-Appeal Brief Request for Review were filed herein on September 27, 2005, and the Notice of Panel Decision in response to the Request for Review was mailed on November 7, 2005.

**I. REAL PARTY IN INTEREST**

The real party in interest is International Business Machines Corporation, assignee of 100% interest of the above-referenced patent application.

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## **II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellant, Appellant's legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

## **III. STATUS OF CLAIMS**

Claims 1-13 and 21-26 are all the claims presently pending in the application and are set forth fully in the attached Appendix. Claims 14-20 have been canceled. Claim 27 has been withdrawn as being allegedly independent and distinct from the originally claimed invention.

Claims 1-13 and 21-26 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Brick et al. (U. S. Patent No. 6,269,342) in view of Adamec et al. (U.S. Patent No. 6,211,773).

Appellant respectfully appeals this rejection of claims 1-13 and 21-26.

## **IV. STATEMENT OF AFTER-FINAL AMENDMENTS**

Appellant notes that an Amendment in response to the Final Office Action dated July 27, 2005, was filed on September 9, 2005. In the Advisory Action dated September 19, 2005, the Examiner indicated that the Amendment would be entered for purposes of appeal.

Appellant notes that the pending claims assuming entry of the September 9th Amendment are included in the Claims Appendix attached hereto.

## **V. SUMMARY OF THE INVENTION**

The claimed invention (as recited, for example, in independent claim 1) is directed to a system for restocking and repricing merchandise. The system includes a shelf label holder including an illuminating device for performing an illuminating function, and a hand-held unit which remotely causes said illuminating device to illuminate under a predetermined condition. Further, the illuminating device includes a plurality of illuminating sections which correspond respectively to locations on a shelf (Application at Figure 2; page 6, lines 1-18). This feature may help guide a store clerk to a correct store location for restocking

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and/or repricing merchandise (Application at page 2, lines 13-16).

Conventional systems for restocking and/or repricing merchandise use an electronic tag which is affixed to the shelf near the merchandise so that the price of the merchandise can be changed electronically. However, these systems are expensive and fragile and do not help to guide the store clerk to a particular shelf location (Application at page 2, lines 3-11).

The claimed invention, on the other hand, includes a shelf label holder having an illuminating device which includes a **plurality of illuminating sections which correspond respectively to locations on a shelf**. The holder may be used, for example, to hold a paper shelf label and an illuminating section on the holder may be illuminated in order to indicate a particular location on a shelf, and thereby help guide a store clerk to a correct store location for restocking and/or repricing merchandise (Application at Figure 2; page 2, lines 13-16).

For example, as depicted in Figures 1 and 2 of the Application, an exemplary embodiment of the claimed invention includes a system 100 including a shelf label holder 200 having an illuminating device 230 for performing an illuminating function, and a hand-held unit 130 which remotely causes the illuminating device 230 to illuminate under a predetermined condition. Further, **the illuminating device 230 includes a plurality of illuminating sections which correspond respectively to locations on a shelf** (Application at Figures 1 and 2; page 6, lines 1-18).

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED**

The only ground of rejection to be reviewed by the Board of Patent Appeals and Interferences includes the rejection Claims 1-13 and 21-26 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Brick et al. (U. S. Patent No. 6,269,342) in view of Adamec et al. (U.S. Patent No. 6,211,773).

**VIII. ARGUMENT:** Claims 1-13 and 21-26 are clearly not unpatentable under 35 U.S.C. § 103(a) over Brick et al. (U. S. Patent No. 6,269,342) in view of Adamec et al. (U.S. Patent No. 6,211,773).

As set forth on pages 3-8 of the Office Action dated July 27, 2005, the Examiner

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rejected claims 1-13 and 21-26 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Brick et al. (U. S. Patent No. 6,269,342) in view of Adamec et al. (U.S. Patent No. 6,211,773), by stating:

*"Brick et al. disclose a system for restocking and repricing merchandise, comprising: a shelf label holder; and a hand-held unit which remotely programs said shelf label holder, but the shelf label holder of Brick et al. fails to include an illuminating section which is illuminated by remote control of the hand-held unit under a predetermined condition. However, Adamec et al. disclose a similar system for restocking and repricing merchandise, and the shelf label of Adamec et al. indeed includes a plurality of illuminating sections which are illuminated by remote control of the hand-held unit under a predetermined condition (see, in particular, column 4, line 32 et seq.). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Brick et al. so as to include an illuminating section in the shelf label which would be illuminated by remote control of the handheld unit under a predetermined condition, in accordance with the teachings of Adamec et al., in order to facilitate locating the shelf label to be programmed.*

*Regarding claim 2, the system of Brick et al. includes a host controller for storing merchandise data and planogram data, processing said data and remotely controlling an operation of said hand-held unit and said shelf label holder.*

*Regarding claims 3 and 24-26, the shelf label holder of Brick et al. includes a shelf control unit, and the shelf label holder of Adamec et al. includes a shelf control unit for controlling an illumination of the shelf label holder; with the illuminating section illuminating as directed by the shelf control unit. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the system of Brick et al. so as to include that the shelf control unit would control illumination of the shelf label holder; with the illuminating section illuminating as directed by the shelf control unit, in accordance with the teachings of Adamec et al., in order to provide a convenient means of enabling the illumination section of the shelf label to be controlled.*

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*Regarding claim 4, the system of Brick et al. includes that an identifying section of said shelf label is inserted into said shelf control unit.*

*Regarding claim 5, the system of Brick et al. includes that the shelf control unit comprises: a receptacle for receiving said identifying section of said shelf label; and a transceiver for transmitting signals to said host controller and said hand held unit and receiving signals from said host controller and said hand held unit.*

*Regarding claim 6, the system of Brick et al. includes that the hand-held unit comprises: a transceiver for transmitting signals to said host controller and said shelf control unit and receiving signals from said host controller and said shelf control unit; a display device for displaying merchandise data and planogram data; at least one of a bar code scanner and a keypad for inputting said data into said hand held unit; and a memory for storing said data.*

*Regarding claim 7, the system of Brick et al. includes that the host controller comprises: a memory for storing planogram data and merchandise data; a display device for displaying said data; at least one of a bar code scanner and a keypad for inputting said data; and a transceiver for transmitting signals to said shelf control unit and said hand held unit and receiving signals from said shelf control unit and said hand held unit.*

*Regarding claim 8, the system of Brick et al. includes that the merchandise information comprises vendor information data, pricing data and inventory data, and wherein said planogram data comprises correct merchandise shelf locations.*

*Regarding claim 9, the system of Brick et al. includes that the host controller transmits planogram data and merchandise data to said hand held unit and said hand held unit displays said data (see, in particular, column 14, line 3 et seq.).*

*Regarding claim 10, the system of Brick et al. includes that the identifying section comprises at least one of a bar code, a radio frequency identification (RFID) tag, and a magnetic identification tag.*

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*Regarding claim 11, the system of Adamec et al. includes that the illuminating section comprises at least one of a light-emitting diode, an organic light emitting diode, a liquid crystal display element, a plasma display element, an incandescent light bulb, and a light pipe. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have further modified the shelf label holder of Brick et al. so as to include that the illuminating section would comprises at least one of a light-emitting diode, an organic light emitting diode, a liquid crystal display element, a plasma display element, an incandescent light bulb, and a light pipe, in accordance with the teachings of Adamec et al., in order to provide a convenient means of providing the illumination for the illumination section.*

*Regarding claim 12, the system of Brick et al. includes that the signals comprise at least one of a radiowave signal and infrared signal.*

*Regarding claim 13, the system of Brick et al. includes that the merchandise data comprises merchandise restocking and repricing information.*

*Regarding claims 21 and 22, the system of Brick et al. includes that the illuminating device comprises LEDs formed along a longitudinal edge of said shelf label holder. Regarding claim 23, the system of Brick et al. includes that the shelf label holder is connected to one of an upper and lower surface of a shelf for displaying the merchandise.*

...

*Regarding the argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge generally available to one of ordinary skill in the art would be sufficient to offer reasonable and sufficient motivation to combine.*



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*Furthermore, the combination could have been made readily and easily by any person of ordinary skill in the art, at the time of the invention, with neither undue experimentation, nor risk of unexpected results, and it is well settled that the main test for the tenability of any conclusion of obviousness with respect to any proposed or hypothetical combination or modification of prior art knowledge is whether or not such a combination or modification could have been performed or implemented by any person of ordinary skill in the art, at the time of the invention, with neither undue experimentation, nor risk of unexpected results. See In re Merck & Co., Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 379." (emphasis added)*

**1. Independent claim 1**

Independent claim 1 recites:

*"A system for restocking and repricing merchandise, comprising:  
a shelf label holder comprising an illuminating device for performing an illuminating function; and  
a hand-held unit which remotely causes said illuminating device to illuminate under a predetermined condition,  
wherein said illuminating device comprises a plurality of illuminating sections which correspond respectively to locations on a shelf." (emphasis added)*

Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law.

Appellant respectfully submits that, contrary to the Examiner's assertions, Brick would not have been combined with Adamec as alleged by the Examiner and even if Brick would have been combined with Adamec, the alleged combination would not teach or suggest the invention of claims 1-13 and 21-26.

Specifically, Brick is directed to a shelf tag associated with a particular product, whereas Adamec is directed to an electronic price label (EPL) system which is intended to

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allow an operator to control an EPL computer from anywhere in a store (Adamec at col. 2, lines 40-44). Thus, Brick is completely unrelated to Adamec, and no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight. Further, Appellant would submit that the Examiner can point to no motivation or suggestion in the references to urge the combination as alleged by the Examiner. Therefore, the Examiner has failed to make a prima facie case of obviousness.

Moreover, neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests a shelf label holder having an illuminating device which "*comprises a plurality of illuminating sections which correspond respectively to locations on a shelf*", as recited in claim 1. The plurality of illuminating sections may help guide a store clerk to a correct store location for restocking and/or repricing merchandise (Application at page 2, lines 13-16).

**a. The Office Action is Incomplete**

The Examiner asserts that Brick discloses all of the features recited in claim 1, but concedes that Brick does not teach or suggest an illuminating section which is illuminated by remote control of the hand-held unit under a predetermined condition. However, the Examiner alleges that Adamec teaches such an illuminating section.

Appellant submits however, that the Examiner has failed to provide any support for his general allegations. That is, **nowhere does the Examiner indicate WHERE Brick or Adamec discloses the features of claim 1**. Indeed, Appellant submits that the rejection of claim 1 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, although the Examiner alleges that Adamec discloses a plurality of illuminating sections in column 4, line 32 et seq. of Adamec, it is unclear which features in Brick the Examiner is attempting to equate with the shelf label holder or hand-held unit of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any

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reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 1, and the Board should withdraw this rejection.

**b. Brick Does not Teach or Suggest a HOLDER for Holding a Shelf Label, Let Alone a Holder Having an Illuminating Device**

The Examiner alleges that Brick discloses a holder for holding a shelf label. However, the Examiner appears to confuse a "shelf label" with a "shelf label holder". That is, it is a "shelf label holder" and not necessarily a "shelf label" which includes the illuminating device in the claimed invention. Indeed, as illustrated in Figure 2 of the Application, in the exemplary aspects of claimed invention the shelf label 220 may be merely a paper or plastic label inserted into the shelf label holder 200 (Application at page 5, lines 13-15). That is, the label 220 in the claimed invention may include a simple paper label and is not necessarily an electronic device such as the electronic shelf tag 10 as in Brick (e.g., see Brick at col. 3, line 66-col. 4, line 4), or an electronic label such as the label 18 in Adamec (e.g., see Adamec at Figure 1).

Indeed, nowhere does the Examiner even allege that Brick teaches or suggests a shelf label holder having an illuminating device. Instead, the Examiner merely alleges that "*the shelf label of Adamec et al. indeed includes a plurality of illuminating sections which are illuminated by remote control of the hand-held unit*". Clearly, the Examiner is very confused and does NOT understand the claimed invention.

Appellant respectfully submits that a "shelf label" is completely different from a "shelf label holder". For example, as illustrated in Figure 2 of the present Application, the shelf label 220 (e.g., paper shelf label) may be inserted into the shelf label holder 200 (Application at page 14, lines 19-22). In fact, Appellant submits that a "holder" may have the function of holding something (e.g., a shelf label). However, nowhere does the Examiner even allege

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that Brick discloses some structure which has a function of holding anything (e.g. a shelf label).

Appellant would point out that the Examiner cannot merely decide on a whim to read the term "holder" out of claim 1. Instead, the Examiner must at least allege that such a "holder" is disclosed or suggested by Brick to support his rejection.

Indeed, Appellant submits that one of ordinary skill in the art would understand a shelf label holder to include a structure for holding a shelf label, and a shelf label to include a label which is held by a shelf label holder. That is, no person of ordinary skill in the art would consider these terms to be interchangeable. Thus, even assuming (*arguendo*) that the Examiner's allegations are correct, **the Examiner has failed to even allege that Brick teaches or suggests a HOLDER which includes an illuminating device as in the claimed invention (e.g., see Figure 2 of the Application).**

Moreover, the Examiner does not even allege that Brick would have been modified to include an illuminating device in a shelf label holder, but instead alleges only that Brick would have been modified to "include an illuminating section in the shelf label" (emphasis added) (Office Action at page 4). Appellant would again point out that it is a shelf label **HOLDER** and not necessarily a shelf label which includes an illuminating device in the claimed invention.

Thus, even assuming (*arguendo*) that the Examiner's allegation that Brick would have been combined with Adamec "to include an illuminating section in the shelf label" is correct, the Examiner has failed to even allege that Brick (or an alleged combination of Brick and Adamec) teaches or suggests a shelf label **HOLDER having an illuminating device with a plurality of illuminating sections.**

**c. Adamec Merely Discloses Electronic Price Labels (e.g., Tags) Which Do Not Help Direct A Store Clerk to a Shelf Location**

First, Appellant would point out that Adamec teaches that hand-held terminals have problems which he allegedly addresses by instead using a remote control device 24 (Adamec

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at col. 1, line 66-col. 2, line 9). Therefore, Adamec teaches away from the claimed invention which includes a hand-held terminal.

Further, Adamec is directed to an "electronic price label" system, the shortcomings of which are discussed in the Background section of the present Application. Specifically, the labels (e.g., tags) are expensive and cannot provide the same amount of information as a paper shelf label (Application at page 2, lines 7-8). Moreover, the Application states that *"like paper labels, such electronic tags do not help guide the store clerk to the correct shelf location"* (emphasis added) (Application at page 2, lines 11-12).

Nowhere does Adamec even recognize the problem of locating a shelf on which merchandise is located, let alone offer a solution to the problem. Instead, Adamec is merely intended to provide a remote control device that would allow an operator to control an EPL computer from anywhere in a store (Adamec at col. 2, lines 40-44).

**d. Adamec Does Not Teach or Suggest an Illuminating Device Having a Plurality of Illuminating Sections**

The Examiner attempts to rely on col. 4, line 32 et seq. in Adamec to support his position that Adamec teaches a shelf label having "a plurality of illuminating sections". However, again, it is a "shelf label holder" and not necessarily a "shelf label" which includes the illuminating device in the claimed invention. Therefore, even assuming (arguendo) that Adamec discloses a shelf label including a plurality of illuminating sections, this would not teach or suggest a shelf label holder as in the claimed invention.

Further, as noted above, the Examiner does not indicate which features in Adamec he is attempting to equate with the illuminating device of the claimed invention. However, assuming that the Examiner is attempting to equate the indicators 45a and 45b in Adamec with the illuminating device of the claimed invention, it is important to understand that Figures 2A-2B depict a remote control device 24 which includes "the components of two

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[labels] represented as portions 50a and 50b" (emphasis added) (Adamec at col. 3, lines 66-67). That is, features 50a and 50b are not labels but merely "components" of labels. Indeed, labels in Adamec are identified by the numeral "18" in Adamec, so if Figures 2A-2B depicted labels as alleged by the Examiner, then these drawings would include the identifier numeral "18". However, nowhere do Figures 2A-2B include the numeral "18", but instead use the numerals "50a" and "50b" to distinguish between a label and components of a label.

Moreover, Adamec merely states that these indicators 45a and 45b are "preferably an optional alternative or addition to displaying of acknowledgements by displays 46a and 46b" in the remote control device (Adamec at col. 4, lines 32-34). Adamec states that displays 46a and 46b are used "to signal an operator that EPL computer 12 has executed a desired function in response to a command message from device 24" (Adamec at col. 4, lines 22-24).

That is, Adamec merely teaches that an operator of the remote control device 24 may view the indicators 45a and 45b on the remote control device 24 (i.e., not on the label 18) to confirm that the computer 12 has executed a desired function. Thus, nowhere does Adamec teach or suggest that the remote control device 24 remotely causes an indicator on a label to illuminate.

Moreover, even assuming (arguendo) that the portions 50a and 50b which may represent components of a label in Figures 2A and 2B may include the indicators 45a and 45b, it is clear that each of the components 50a and 50b include only one indicator, 45a and 45b, respectively. That is, the components 50a and 50b do not include an illuminating device having a plurality of illuminating sections.

Thus, even assuming (arguendo) that the Examiner's allegations are correct that the label 18 includes an indicator (e.g., indicator 45a), nowhere does Adamec teach or suggest that the indicator includes a plurality of illuminating sections.

e. **Adamec Does Not Teach or Suggest Illuminating Sections  
Which Correspond Respectively to Locations on a Shelf**

Even assuming (arguendo) that Adamec teaches a **HOLDER** having an illuminating device with a plurality of illuminating sections, Adamec certainly does not teach or suggest

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illuminating sections which correspond respectively to locations on a shelf as in the claimed invention.

That is, assuming that Examiner is somehow attempting to equate the indicators 45a and 45b in the remote control device 24 with the illuminating device of the claimed invention, it is important to point out that **nowhere does Adamec teach or suggest that these indicators correspond to locations on a shelf**. Instead, Adamec merely states that indicators 45a and 45b are "preferably an optional alternative or addition to displaying of acknowledgements by displays 46a and 46b" which are used "to signal an operator that EPL computer 12 has executed a desired function in response to a command message from device 24" (Adamec at col. 4, lines 22-24).

Indeed, Appellant would point out that the Examiner has completely ignored this limitation in the claims. That is, **the Examiner does NOT even mention this important limitation in his rejection of the claims**.

Therefore, again, the Office Action dated May 20, 2005, was incomplete under 37 C. F. R. 1.104 which states that "[t]he Examiner's action **will be complete as to all matters**" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 1. Therefore, the Board is respectfully requested to withdraw this rejection.

## **2. Dependent Claim 2**

Claim 2 depends from claim 1 and further recites "*a host controller for storing merchandise data and planogram data, processing said data and remotely controlling an operation of said hand-held unit and said shelf label holder*". This feature is clearly described in the present Application at page 7, lines 7-22.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed**.

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Indeed, Appellant submits that the rejection of claim 2 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **host controller** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 2**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 2. Therefore, the Board is respectfully requested to withdraw this rejection.

### 3. Dependent Claim 3

Claim 3 depends from claim 2 and further recites "*a shelf control unit for controlling an illumination of said illuminating device*". This feature is described in the present Application at page 10, line 15 - page 11, line 1.

It is unclear whether the Examiner is asserting that this feature is disclosed by Brick or Adamec (e.g., see page 4 of the Office Action). The Examiner states only that Brick and Adamec disclose shelf control units. That is it.

Indeed, nowhere does the Examiner indicate where this feature might be found in



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either **Brick** or **Adamec**. Indeed, Appellant submits that the rejection of claim 3 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in **Brick** and/or **Adamec** on which the Examiner is relying support his position. Specifically, it is unclear which features in **Brick** the Examiner is attempting to equate with the **shelf control unit** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 3, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does **Brick** or **Adamec**, or any alleged combination of **Brick** or **Adamec**, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither **Brick**, nor **Adamec**, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 3. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 4. Dependent Claim 4

Claim 4 depends from claim 3 and further recites "*wherein an identifying section of said shelf label is inserted into said shelf control unit*". This feature is described in the present Application at page 5, lines 17-22; page 14, lines 16-18.

The Examiner asserts that this feature is disclosed by **Brick**, but nowhere does the Examiner indicate where in the 20 columns of **Brick** that the feature is disclosed. Indeed, Appellant submits that the rejection of claim 4 is so general and vague that

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Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with a shelf control unit in which **an identifying section of shelf label is inserted**, as in of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 4**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 4. Therefore, the Board is respectfully requested to withdraw this rejection.

##### 5. Dependent Claim 5

Claim 5 depends from claim 4 and further recites "*wherein said shelf control unit comprises: a receptacle for receiving said identifying section of said shelf label; and a transceiver for transmitting signals to said host controller and said hand held unit and receiving signals from said host controller and said hand held unit*". This feature is described in the present Application at page 10, line 15-page 11, line 1.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed**.

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Indeed, Appellant submits that the rejection of claim 5 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **receptacle and transceiver of a shelf control unit** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 5**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 5. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 6. Dependent Claim 6

Claim 6 depends from claim 3 and further recites "*wherein said hand held unit comprises: a transceiver for transmitting signals to said host controller and said shelf control unit and receiving signals from said host controller and said shelf control unit; a display device for displaying merchandise data and planogram data; at least one of a bar code scanner and a keypad for inputting said data into said hand held unit; and a memory for storing said data*". This feature is described in the present Application at page 8, lines 5-23.

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The Examiner asserts that this feature is disclosed by Brick, but nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed. Indeed, Appellant submits that the rejection of claim 6 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the transceiver, display device, at least one of a bar code scanner and keypad, and a memory, of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R.

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§1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 6, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 6. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 7. Dependent Claim 7

Claim 7 depends from claim 3 and further recites "*wherein said host controller comprises: a memory for storing planogram data and merchandise data; a display device for displaying said data; at least one of a bar code scanner and a keypad for inputting said data; and a transceiver for transmitting signals to said shelf control unit and said hand held unit and receiving signals from said shelf control unit and said hand held unit*". This feature is

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described in the present Application at page 7, line - page 8, line 4.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed.** Indeed, Appellant submits that the rejection of claim 7 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **memory, display device, at least one of a bar code scanner and keypad, and transceiver**, of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 7**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 7. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 8. Dependent Claim 8

Claim 8 depends from claim 7 and further recites *"wherein said merchandise information comprises vendor information data, pricing data and inventory data, and wherein said planogram data comprises correct merchandise shelf locations "*. This feature

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is described in the present Application at page 8, lines 5-10.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed.** Indeed, Appellant submits that the rejection of claim 8 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with a host controller having a memory which stores the **merchandise data and planogram data** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 8**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 8. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 9. Dependent Claim 9

Claim 9 depends from claim 2 and further recites "*wherein said host controller transmits planogram data and merchandise data to said hand held unit and said hand held unit displays said data*". This feature is described in the present Application at page 8, lines

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10-13.

Appellant notes that unlike claims 2-8, 10-13 and 21-26, for which the Examiner provides no support for his allegations, for claim 9 the Examiner at least attempts to support his rejection by referring to col. 14, line 3 et seq. in Brick.

However, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does the cited passage teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 9. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 10. Dependent Claim 10

Claim 10 depends from claim 4 and further recites "*wherein said identifying section comprises at least one of a bar code, a radio frequency identification (RFID) tag and a magnetic identification tag*". This feature is described in the present Application at page 5, lines 17-19.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed.** Indeed, Appellant submits that the rejection of claim 10 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the a shelf control unit in which a **shelf label's identifying section including at least one of a bar code, an RFID tag and a magnetic identification tag is inserted**, of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any

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reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 10**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 10. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 11. **Dependent Claim 11**

Claim 11 depends from claim 3 and further recites "*wherein said illuminating section comprises at least one of a light-emitting diode, an organic light emitting diode, a liquid crystal display element, a plasma display element, an incandescent light bulb and a light pipe*". This feature is described in the present Application at page 6, lines 1-12.

The Examiner asserts that this feature is disclosed by Adamec, but **nowhere does the Examiner indicate where the feature might be found in Adamec**. Indeed, Appellant submits that the rejection of claim 11 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Adamec on which the Examiner is relying support his position. Specifically, it is unclear which features in Adamec the Examiner is attempting to equate with the **illuminating section** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and



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clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 11**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 11. Therefore, the Board is respectfully requested to withdraw this rejection.

#### **12. Dependent Claim 12**

Claim 12 depends from claim 5 and further recites "*wherein said signals comprise at least one of a radiowave signal and infrared signal*". This feature is described in the present Application at page 10, lines 13-14.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed**. Indeed, Appellant submits that the rejection of claim 12 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **shelf control unit having a transceiver which receives and transmits at least one of radiowave and infrared signals**, of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and

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clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 12, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 12. Therefore, the Board is respectfully requested to withdraw this rejection.

### 13. Dependent Claim 13

Claim 13 depends from claim 2 and further recites "*wherein said merchandise data comprises merchandise restocking and repricing information*". This feature is described in the present Application at page 12, lines 1-6.

The Examiner asserts that this feature is disclosed by Brick, but nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed. Indeed, Appellant submits that the rejection of claim 13 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the host controller having a memory which stores merchandise restocking and repricing information, of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

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Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 13, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 13. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 14. Dependent Claim 21

Claim 21 depends from claim 1 and further recites "*wherein said illuminating device is formed along a longitudinal edge of said shelf label holder*". This feature is described in the present Application at Figure 2; page 6, lines 1-12.

The Examiner asserts that this feature is disclosed by Brick, but nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed. Indeed, Appellant submits that the rejection of claim 21 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **illuminating device** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 21, and the Board should withdraw this

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rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 21. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 15. Dependent Claim 22

Claim 22 depends from claim 1 and further recites "*wherein said illuminating device comprises a plurality of light-emitting diodes (LEDs)*". This feature is described in the present Application at page 6, lines 1-12.

The Examiner asserts that this feature is disclosed by Brick, but nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed. Indeed, Appellant submits that the rejection of claim 22 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **illuminating device** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 22, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a

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matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 22. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 16. Dependent Claim 23

Claim 23 depends from claim 1 and further recites "*wherein said shelf label holder is connected to one of an upper and lower surface of a shelf for displaying said items of merchandise*". This feature is described in the present Application at page 6, lines 1-12.

The Examiner asserts that this feature is disclosed by Brick, but **nowhere does the Examiner indicate where in the 20 columns of Brick that the feature is disclosed.** Indeed, Appellant submits that the rejection of claim 23 is so **general and vague** that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the **shelf label holder** of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for **failing to clearly state the Examiner's grounds for rejecting claim 23**, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

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Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 23. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 17. Dependent Claim 24

Claim 24 depends from claim 1 and further recites "*wherein said locations on said shelf correspond respectively to items of merchandise, and wherein an illuminating section of said plurality of illuminating sections is individually illuminated to indicate a location on said shelf which corresponds to said illuminating section, for one of restocking and repricing an item of merchandise which corresponds to said location on said shelf*". This feature is described in the present Application at page 6, lines 1-12; page 12, line 14-page 15, line 8.

It is unclear whether the Examiner is asserting that this feature is disclosed by Brick or Adamec (e.g., see page 4 of the Office Action). The Examiner states only that Brick and Adamec disclose shelf control units. That is it.

Indeed, nowhere does the Examiner indicate where this feature might be found in either Brick or Adamec. Indeed, Appellant submits that the rejection of claim 24 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick and/or Adamec on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the shelf control unit of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

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Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 24, and the Board should withdraw this

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rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 24. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 18. Dependent Claim 25

Claim 25 depends from claim 1 and further recites "*wherein said plurality of illuminating sections correspond respectively to items of merchandise*". This feature is described in the present Application at page 12, lines 22-24.

It is unclear whether the Examiner is asserting that this feature is disclosed by Brick or Adamec (e.g., see page 4 of the Office Action). The Examiner states only that Brick and Adamec disclose shelf control units. That is it.

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**Indeed, nowhere does the Examiner indicate where this feature might be found in either Brick or Adamec.** Indeed, Appellant submits that the rejection of claim 25 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick and/or Adamec on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the shelf control unit of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state

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the Examiner's grounds for rejecting claim 25, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 25. Therefore, the Board is respectfully requested to withdraw this rejection.

#### 19. Dependent Claim 26

Claim 26 depends from claim 1 and further recites "*wherein an illuminating section of said plurality of illuminating sections is individually illuminated to direct one of restocking and repricing operation for an item of merchandise which corresponds to said illuminating section*". This feature is described in the present Application at page 12, line 14-page 15, line 8.

It is unclear whether the Examiner is asserting that this feature is disclosed by Brick or Adamec (e.g., see page 4 of the Office Action). The Examiner states only that Brick and Adamec disclose shelf control units. That is it.

Indeed, nowhere does the Examiner indicate where this feature might be found in either Brick or Adamec. Indeed, Appellant submits that the rejection of claim 26 is so general and vague that Appellant can not even fashion a response to the rejection. That is, it is impossible to glean from the Examiner's vague assertions the features in Brick and/or Adamec on which the Examiner is relying support his position. Specifically, it is unclear which features in Brick the Examiner is attempting to equate with the shelf control unit of the claimed invention. Therefore, it is impossible for the Appellant to fashion a response to the Examiner's allegations.

Therefore, the Office Action dated July 27, 2005, was incomplete under 37 C. F. R. §1.104 which requires that "[t]he Examiner's action will be complete as to all matters" (emphasis added), and MPEP 707.07 which states that "[w]here a claim is rejected for any



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reason related to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated" (emphasis added).

Therefore, it is clear that the Office Action was incomplete for failing to clearly state the Examiner's grounds for rejecting claim 26, and the Board should withdraw this rejection.

Moreover, Appellant respectfully submits that the Examiner's position is flawed as a matter of fact and as a matter of law. Specifically, nowhere does Brick or Adamec, or any alleged combination of Brick or Adamec, teach or suggest this feature.

Therefore, Appellant respectfully submits that neither Brick, nor Adamec, nor any alleged combination thereof teaches or suggests each and every element of the claimed invention as recited in claim 26. Therefore, the Board is respectfully requested to withdraw this rejection.

In summary, therefore, the dependent claims of the present Application define elements and limitations which further place the claimed invention squarely in the realm of statutory subject matter and which provide a useful, tangible and concrete result.

Therefore, dependent claims 2-13 and 21-26, like independent claim 1, include at least one element which is not taught or suggested by the cited references, or any combination of the cited references.

In view of all of the foregoing, Appellant respectfully submits that the Examiner's rejections are erroneous as a matter of fact and law

#### VIII. CONCLUSION

Appellant notes that neither an Evidence Appendix nor a Related Proceedings Appendix are applicable in this case.

In view of the foregoing, Appellant submits that claims 1-13 and 21-26, all the claims presently pending in the application, are patentably distinct from the prior art of record and in condition for allowance. Thus, the Board is respectfully requested to remove the rejections of claims 1-13 and 21-26.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Assignee's Deposit Account number 50-0510.

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Dated: 11/13/06

Respectfully submitted,



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**CLAIMS APPENDIX**

1. A system for restocking and repricing merchandise, comprising:  
a shelf label holder comprising an illuminating device for performing an illuminating function; and  
a hand-held unit which remotely causes said illuminating device to illuminate under a predetermined condition,  
wherein said illuminating device comprises a plurality of illuminating sections which correspond respectively to locations on a shelf.
2. The system according to claim 1, further comprising:  
a host controller for storing merchandise data and planogram data, processing said data and remotely controlling an operation of said hand-held unit and said shelf label holder.
3. The system according to claim 2, wherein said shelf label holder comprises:  
a shelf control unit for controlling an illumination of said illuminating device.
4. The system according to claim 3, wherein an identifying section of said shelf label is inserted into said shelf control unit.
5. The system according to claim 4, wherein said shelf control unit comprises:  
a receptacle for receiving said identifying section of said shelf label; and  
a transceiver for transmitting signals to said host controller and said hand held unit and receiving signals from said host controller and said hand held unit.
6. The system according to claim 3, wherein said hand held unit comprises:  
a transceiver for transmitting signals to said host controller and said shelf control unit and receiving signals from said host controller and said shelf control unit;  
a display device for displaying merchandise data and planogram data;  
at least one of a bar code scanner and a keypad for inputting said data into said hand held unit; and

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a memory for storing said data.

7. The system according to claim 3, wherein said host controller comprises:  
a memory for storing planogram data and merchandise data;  
a display device for displaying said data;  
at least one of a bar code scanner and a keypad for inputting said data; and  
a transceiver for transmitting signals to said shelf control unit and said hand held unit  
and receiving signals from said shelf control unit and said hand held unit.
8. The system according to claim 7, wherein said merchandise information comprises  
vendor information data, pricing data and inventory data, and wherein said planogram data  
comprises correct merchandise shelf locations.
9. The system according to claim 2, wherein said host controller transmits planogram  
data and merchandise data to said hand held unit and said hand held unit displays said data.
10. The system according to claim 4, wherein said identifying section comprises at least  
one of a bar code, a radio frequency identification (RFID) tag and a magnetic identification  
tag.
11. The system according to claim 3, wherein said illuminating section comprises at least  
one of a light-emitting diode, an organic light emitting diode, a liquid crystal display element,  
a plasma display element, an incandescent light bulb and a light pipe.
12. The system according to claim 5, wherein said signals comprise at least one of a  
radiowave signal and infrared signal.
13. The system according to claim 2, wherein said merchandise data comprises  
merchandise restocking and repricing information.

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14. - 20. (Canceled)

21. The system according to claim 1, wherein said illuminating device is formed along a longitudinal edge of said shelf label holder.

22. The system according to claim 1, wherein said illuminating device comprises a plurality of light-emitting diodes (LEDs).

23. The system according to claim 1, wherein said shelf label holder is connected to one of an upper and lower surface of a shelf for displaying said items of merchandise.

24. The system according to claim 1, wherein said locations on said shelf correspond respectively to items of merchandise, and

wherein an illuminating section of said plurality of illuminating sections is individually illuminated to indicate a location on said shelf which corresponds to said illuminating section, for one of restocking and repricing an item of merchandise which corresponds to said location on said shelf.

25. The system according to claim 1, wherein said plurality of illuminating sections correspond respectively to items of merchandise.

26. The system according to claim 25, wherein an illuminating section of said plurality of illuminating sections is individually illuminated to direct one of restocking and repricing operation for an item of merchandise which corresponds to said illuminating section.

27. (Withdrawn) A system for at least one of restocking and repricing merchandise, comprising:

a shelf label holder comprising:

an illuminating device comprising a plurality of illuminating sections which correspond respectively to locations on a shelf; and

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a control unit for controlling an illumination of said illuminating device; and  
a host controller which wirelessly communicates with said control unit to cause said  
illuminating device to illuminate under a predetermined condition.

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**Evidence Appendix**

**Not Applicable**

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**Related Proceedings Appendix**

**Not Applicable**



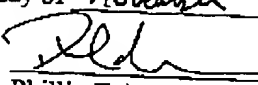
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I hereby certify that the foregoing Appeal Brief was filed by facsimile with the United States Patent and Trademark Office, Examiner Gerald O'Connor, Group Art Unit # 3627 at fax number (571) 273-8300 this 13<sup>th</sup> day of November, 2006.

  
Phillip E. Miller  
Reg. No. 46,060

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